

Maxim B. Litvak (CA Bar No. 215852)  
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Attorneys for the Official Committee  
of Unsecured Creditors

**UNITED STATES BANKRUPTCY COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

In re:  
**GABRIEL TECHNOLOGIES CORP., et al.,**  
Debtors.

Case No.: 13-30340 - DM  
(Case No. 13-30341)

Chapter 11

(Jointly Administered)

**DECLARATION OF MAXIM B. LITVAK  
IN SUPPORT OF MOTION FOR ORDER  
APPROVING STIPULATION  
APPOINTING OFFICIAL COMMITTEE  
OF UNSECURED CREDITORS AS  
ESTATE REPRESENTATIVE TO (1)  
INVESTIGATE AND, IF APPROPRIATE,  
PURSUE ACTIONS AGAINST INSIDERS  
AND (2) BRING AND RESOLVE  
OBJECTIONS TO INSIDER CLAIMS**

**Hearing Requested on Shortened Time:**

Date: April 26, 2013

Time: 9:30 a.m.

Place: 235 Pine Street, 23<sup>rd</sup> Floor  
San Francisco, California

Judge: Honorable Dennis Montali

I, Maxim B. Litvak, declare:

1. I am a partner in the law firm of Pachulski Stang Ziehl & Jones LLP, counsel to the Official Committee of Unsecured Creditors (“Committee”) of the above-captioned debtors and debtors in possession (collectively, the “Debtors”). I make this declaration of my own personal knowledge and, if called as a witness, I could and would testify competently thereto.

2. On March 18, 2013, the Office of the United States Trustee appointed the Committee. On April 8, 2013, Pachulski Stang Ziehl & Jones LLP was approved as counsel for the Committee.

3. There is a possibility that the Debtors' estates have certain claims against current or former insiders of the Debtors as defined by section 101(31) of the Bankruptcy Code ("Insiders"), or defenses to claims that may be asserted by Insiders. Such claims should be investigated and, in appropriate circumstances, pursued by an estate representative.

4. The Committee is informed that the Debtors have two management liability policies that are currently in place: (1) a primary policy issued by XL Specialty Insurance Company with a limit of liability of \$5 million, and (2) an excess policy issued by National Union Fire Insurance Company of Pittsburgh, Pa with a limit of liability of \$2 million (together, the "D&O Policies"). The D&O Policies are currently set to expire on May 16, 2013.

5. Counsel for the Debtors and the Committee have entered into the *Stipulation Appointing Official Committee of Unsecured Creditors as Estate Representative to (1) Investigate and, If Appropriate, Pursue Actions Against Insiders and (2) Bring and Resolve Objections to Insider Claims* (the "Stipulation"). A true and correct copy of the Stipulation is attached hereto as **Exhibit A**.

6. The Committee seeks an order from the Court approving the Stipulation. A copy of the proposed order approving the Stipulation is attached hereto as **Exhibit B**.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 12<sup>th</sup> day of April, 2013 at San Francisco, California.

/s/ Maxim B. Litvak  
Maxim B. Litvak

# **Exhibit A**

Maxim B. Litvak (CA Bar No. 215852)  
PACHULSKI STANG ZIEHL & JONES LLP  
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UNITED STATES BANKRUPTCY COURT  
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Case No.: 13-30340 - DM  
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**STIPULATION APPOINTING OFFICIAL  
COMMITTEE OF UNSECURED  
CREDITORS AS ESTATE  
REPRESENTATIVE TO (1)  
INVESTIGATE AND, IF APPROPRIATE,  
PURSUE ACTIONS AGAINST INSIDERS  
AND (2) BRING AND RESOLVE  
OBJECTIONS TO INSIDER CLAIMS**

The above-captioned debtors and debtors in possession (the "Debtors"), on the one hand, and the Official Committee of Unsecured Creditors appointed in these cases (the "Committee"), on the other hand, by and through the undersigned counsel of record hereby enter into this *Stipulation Appointing Official Committee of Unsecured Creditors as Estate Representative to (1) Investigate and, If Appropriate, Pursue Actions Against Insiders and (2) Bring and Resolve Claims Filed By Insiders* (the "Stipulation") with reference to the following facts and circumstances:

I.

RECITALS

A. On February 14, 2013 (the "Petition Date"), the Debtors commenced these bankruptcy cases by each filing a voluntary petition under Chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code") in the United States Bankruptcy Court, Northern District of California, San Francisco Division (the "Bankruptcy Court"), under jointly administered case No. 13-30340-DM.

B. On March 18, 2013, the Office of the United States Trustee appointed the Committee. On April 8, 2013, Pachulski Stang Ziehl & Jones LLP was approved as counsel for the Committee.

C. The Debtors are debtors in possession and no trustee or examiner has been appointed in these cases to date.

D. The Debtors remain in possession of their estates and continue to manage their affairs. It is the Debtors' intent to propose a plan of reorganization for the treatment and disposition of all property and obligations within their estates.

E. Upon the request of the Committee, the Debtors are prepared to stipulate to the appointment of the Committee as estate representative to investigate and, if appropriate, pursue the following:

(i) "Actions Against Insiders": any and all causes of action of the Debtors' estates against current or former insiders of the Debtors as defined by section 101(31) of the Bankruptcy Code (collectively, "Insiders"), including any avoidance actions against Insiders under Chapter 5 of the Bankruptcy Code and any applicable state fraudulent transfer law, whether or not such actions seek an affirmative recovery or are raised as a defense to, or offset against, the allowance of a claim against the Debtors.

(ii) "Objections to Insider Claims": objections or the compromise, allowance, or resolution of any and all claims filed by Insiders or scheduled by the Debtors as owed to Insiders.

**NOW, THEREFORE**, upon the mutual promises and agreements contained herein, the parties hereto intending to be legally bound hereby agree as follows, subject to and conditioned upon

1 approval of this Stipulation by the Bankruptcy Court (the "Approval Order"):

2 **AGREEMENT**

3 1. The Committee shall be, and hereby is, appointed estate representative of the Debtors  
4 for purposes of investigating and, if appropriate, prosecuting and pursuing (or settling, subject to the  
5 provisions of Bankruptcy Rule 9019) the Actions Against Insiders, and prosecuting and pursuing (or  
6 settling, subject to the provisions of Bankruptcy Rule 9019) the Objections to Insider Claims.

7 2. The Committee shall have standing (in the nature of a trustee appointed in these  
8 cases) to file and prosecute in its own name any pleadings, lawsuits, and/or adversary proceedings  
9 relating to the Actions Against Insiders and Objections to Insider Claims in either the Bankruptcy  
10 Court or any other federal or state courts or venues.

11 3. The Committee is authorized to take such actions as may be necessary or appropriate  
12 to investigate, prosecute, and pursue the Actions Against Insiders and Objections to Insider Claims.

13 4. In any action or proceeding investigated or commenced by the Committee pursuant to  
14 the rights conferred hereunder, the Committee shall have the right to assert, and shall be entitled to,  
15 the benefit of the Debtors' privileges and immunities.

16 5. Notwithstanding any implication to the contrary, the Committee shall have discretion  
17 to commence or assert (or not to commence or assert) the Actions Against Insiders and Objections to  
18 Insider Claims; the Committee shall not be obligated to commence or assert any particular actions  
19 against Insiders.

20 6. Notwithstanding any implication to the contrary, any proposed settlement of an  
21 Actions Against an Insider or Objection to an Insider Claim shall continue to be subject to the  
22 approval of the Bankruptcy Court in accordance with applicable requirements of the Bankruptcy  
23 Code, the Federal Rules of Bankruptcy Procedure, or local rules or guidelines of the Bankruptcy  
24 Court.

25 7. The Bankruptcy Court shall retain jurisdiction with respect to any disputes  
26 specifically arising from or relating to this Stipulation.

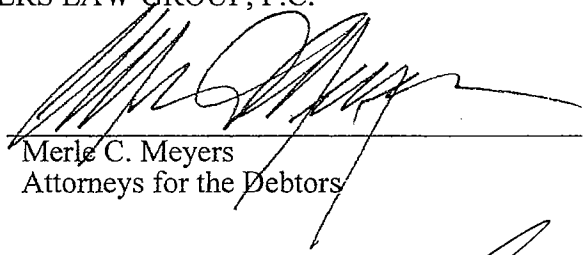
27 8. This Stipulation shall become effective immediately upon entry of the Approval  
28 Order. This Stipulation shall expire upon effectiveness of a chapter 11 plan, the conversion of these

1 cases to chapter 7, the appointment of a chapter 11 trustee, or dissolution of the Committee,  
2 whichever comes first. Upon expiration of this Stipulation, standing to investigate, prosecute, and  
3 pursue the Actions Against Insiders shall revert to the Debtors or as otherwise required by law,  
4 ordered by the Court, or provided in a confirmed plan.

5 Dated: April 12, 2013

MEYERS LAW GROUP, P.C.

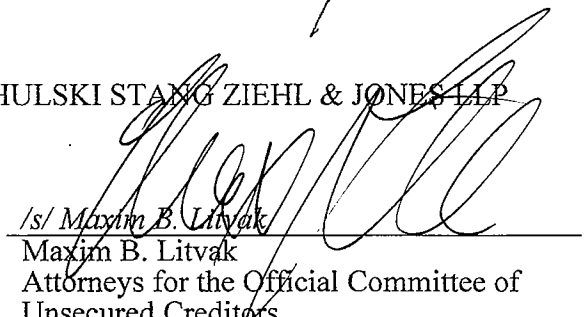
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8 By

  
Merle C. Meyers  
Attorneys for the Debtors

9  
10 Dated: April 12, 2013

PACHULSKI STANG ZIEHL & JONES LLP

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13 By

  
/s/ Maxim B. Litvak  
Maxim B. Litvak  
Attorneys for the Official Committee of  
Unsecured Creditors

# **Exhibit B**



Maxim B. Litvak (CA Bar No. 215852)  
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Case No.: 13-30340 - DM  
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Chapter 11

(Jointly Administered)

**ORDER APPROVING STIPULATION  
APPOINTING OFFICIAL COMMITTEE  
OF UNSECURED CREDITORS AS  
ESTATE REPRESENTATIVE TO (1)  
INVESTIGATE AND, IF APPROPRIATE,  
PURSUE ACTIONS AGAINST INSIDERS  
AND (2) BRING AND RESOLVE  
OBJECTIONS TO INSIDER CLAIMS**

**Hearing:**

Date: April 26, 2013

Time: 9:30 a.m.

Place: 235 Pine Street, 23<sup>rd</sup> Floor  
San Francisco, California

Judge: Honorable Dennis Montali

This matter came before the Court at a hearing upon consideration of the *Motion for Order Approving Stipulation Appointing Official Committee of Unsecured Creditors as Estate Representative to (1) Investigate and, If Appropriate, Pursue Actions Against Insiders and (2) Bring and Resolve Objections to Insider Claims* (the "Motion"), filed by the Official Committee of Unsecured Creditors (the "Committee") of the above-captioned debtors and debtors in possession (the "Debtors"). Based upon the Court's review of the Motion, the Declaration of Maxim B. Litvak in support thereof, and the *Stipulation Appointing Official Committee of Unsecured Creditors as*

1 *Estate Representative to (1) Investigate and, If Appropriate, Pursue Actions Against Insiders and (2)*  
2 *Bring and Resolve Objections to Insider Claims (the “Stipulation”), attached to the Declaration,*

3 **IT IS HEREBY ORDERED THAT:**

4 1. The Stipulation is approved, and the Committee is appointed as estate representative  
5 of the Debtors pursuant to the terms thereof.

6 2. The Court shall retain jurisdiction with respect to any disputes specifically arising  
7 from or relating to the Stipulation.

8 \*\*END OF ORDER\*\*  
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**COURT SERVICE LIST**

**Counsel for Debtors**

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Michele Thompson, Esq.  
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San Francisco, CA 94104

**U.S. Trustee**

Vikas Kumar  
U.S. Department of Justice  
Office of the United States Trustee  
235 Pine Street, Suite 700  
San Francisco, CA 94104

Qualcomm Incorporated  
c/o Cooley LLP  
Ali Mojdehi  
Janet Dean Gertz  
4401 Eastgate Mall  
San Diego, CA 92121

**Counsel for the Official Committee of Unsecured Creditors**

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